

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

The Noahide Laws - Lesson Fifty-Six



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Monetary Law II: Overview of the Laws of Theft

Lesson

56

Introduction

A complete exposition of every way in which monetary laws apply is impossible (to attempt it would require at least a 10 year course!). The landscape of modern business and finance is constantly shifting as new methods of commerce, trade, and payment are created and adapted. The only way to successfully navigate these *halachos* is to be aware enough of the guiding issues to know when to do more research or to seek assistance.

The following is a list of the specific types of theft alluded to in the Torah and that are common to both Jews and Noahides. This list is based upon Maimonides's *Hilchos Gezeilab*, *Hilchos Geneiva*, and *Sefer HaMitzvos*.

The Prohibition Against Theft

The Torah says many times:

You shall not steal.

Its first occurrence, in Exodus 20:15, does not refer to the theft of money or goods, but rather to the theft of another person: kidnapping (this will be discussed in the near future).

Lev 19:11 is the first time *Do not steal* appears with full force as a prohibition against the theft of another's property.¹

¹ See [Mechilta](#) to this verse.

We must note that this prohibition is specifically against “theft,” called *Geneiva* in Hebrew. *Geneiva* specifically refers to the taking of another’s property by stealth and without the victim’s awareness.²

Geneiva, theft, as will all other associated prohibitions, is transgressed whether one takes the item with intent to return it or pay for it later³ or as a practical joke.⁴ This would include taking an item that is normally rented with the intent of returning it later and paying for the time.⁵ Even taking an item from a store and leaving money behind without the shopkeepers’ approval is not permitted.⁶

One may not steal from another even for a constructive purpose. For example, one cannot steal from someone to teach him to better guard his belongings.⁷

Furthermore, one may not steal from one who has cheated him in the past.⁸ One may also not steal an item from another thief.⁹

In short: a person may never take the possessions of another person unless the other person has granted permission. The intent of the one taking the items makes no difference.

An exception to the rule, however, is in the case of a person who cannot sufficiently guard his property due to disability or infirmity. In such a case it is

² See Maimonides, [*Hilchos Geneva 1:3*](#).

³ Maimonides, [*Hilchos Geneva 1:2*](#). *Shulchan Aruch, Choshen Mishpat* 348.

⁴ See *Sefer HaMitzvos, Lo Saaseh* 244; *Sefer HaChinuch* 224. *Minchas Chinuch* 224, however, appears to disagree as to the liability of Noahide in these cases. However, his reasoning is difficult to understand considering it is well established that Noahides are as equally obligated as Jews in these prohibitions.

⁵ *Sefer Sheva Mitzvos HaShem, Geneva* 1:6 citing *Sheiltot* 4 and *HaEmek HaShaila*.

⁶ There are a number of reasons to refrain from this that will be discussed in the live lesson.

⁷ *Sefer Sheva Mitzvos HaShem, Geneva* 1:8.

⁸ *Shulchan Aruch HaRav, Hilchos Gezeila* 1. The rights of an owner to seize back that which is his will be discussed in a future lesson.

⁹ *Hilchos Melachim* 9:9. Stealing a stolen item in order to compensate the owner will be discussed in a future lesson.

permitted (and sometimes perhaps meritorious) for another to take and guard his possessions if necessary.¹⁰

Robbery vs. Theft

Leviticus 19:13 states:

You shall not commit robbery.

The Talmud in Bava Kamma 79b explains that robbery, *Gezeila*, is different from *Geneiva*, theft. While *Geneiva*, theft, is stealing carried out in secret, *Gezeila*, robbery, is stealing executed by force and with full knowledge of the victim.¹¹ As proof the Talmud cites II Samuel 23:21 which refers to a spear being forcibly taken from a person.

This would include armed robbery, using threats and intimidation, and blackmail.

Transactional Law

Leviticus 25:14 states:

*When you sell an item to your neighbor or purchase something from him, do not **victimize** each other.*

The name for this prohibition is **Ona'ah** – meaning victimization or deception. The Talmud explains at length the implications of this verse:¹²

- One transgresses this prohibition by charging another by more than 1/6 (16.67%) of the fair market price for an item.
- The seller must return the overage to the buyer. The overage is considered stolen even though the buyer paid it willingly.
- Alternatively, the buyer may demand that the entire transaction be voided.

¹⁰ *Sefer Chassidim* 585.

¹¹ [Maimonides, Hilchos Gezeilah 1:3.](#)

¹² The primary discussion is found in Bava Metzia 49b to 50b, 61a. However, the topic is discussed further in many places in the Talmud. The practical *Halacha* is brought in Maimonides, *Hilchos Mechira* 12; *Shulchan Aruch, Choshen Mishpat* 227.

- Similarly, this prohibition applies on the buyers end as well – if a buyer underpays by more than 1/6 (16.67%) then the seller may demand the difference be paid to him or that the sale be voided completely.
- There is a statute of limitations on such transactions. Usually, it is the amount of time needed to complete due diligence and determine whether or not the item was priced correctly. Depending on the item, this time varies from a 6 to 24 hours.
- This law does not apply to all goods. The following goods are exempted from the laws of *Ona'ab*:
 - **Real Estate** – While buyers and sellers do not have any recourse to demand compensation or void a real estate transaction, some hold that *Ona'ab* remains prohibited. According to many scholars, there is not even a prohibition.
 - **Collectables** – Collectables, antiques, and other items having no real utilitarian value are not subject to *Ona'ab*. This is because the value of these items is entirely based on desire.
 - **Items whose value is determined by appraisal** – this category is not always so clear, however.
 - **Auction & Barter** – Items that are sold via auction or commonly bartered in exchange for other goods.

**Pressing Another
into a Sale**

This commandment is one of the most commonly misunderstood (and transgressed) by Jews, Noahides, and everyone. Exodus 20:14 states:

Do not covet [lo sachmod] your neighbor's house...

This verse cannot prohibit the feeling of envy. As we shall see, there is another commandment specifically addressing the desire for another's property. What is more, the language of *lo sachmod* is unusual and unclear.¹³ The sages point to Exodus 7:25 as proof of its full connotation:

¹³ Ibn Ezra.

You shall burn in fire the graven image of their gods. You shall not covet [lo sachmod] the gold and silver that is upon them and take it for yourself...

We see that *lo sachmod* involves the actual taking possession of another's property. This prohibition cannot come to forbid seizure by force – that would already be prohibited as robbery. So, what type of “taking” is implied by this prohibition? The Talmud discusses this question in many places and its conclusions are summarized for us by Maimonides:

Anyone who covets a servant, maidservant, house, or utensils belonging to a colleague, or [who covets] any other article that can be purchased from him, and then he pressures him with friends and requests until he [the owner] agrees to sell it, violates a negative commandment. This is even though he pays much money for it. It is stated: 'Do not covet...' One does not violate this commandment until one actually takes possession of the item he covets, as alluded to in the verse, 'Do not covet the gold and silver upon them and take it for yourself.' Implied here is that the word sachmod refers to coveting accompanied by an action.¹⁴

At what point, however, does a solicitation to buy become harassment to sell? The *Betzeil Ha-Chochmah*¹⁵ brings a strong proof that a solicitation to buy becomes harassment only after three attempts have already been made. However, this is only in a case when the two parties are of equal standing and influence to each other. If one party has particular influence over the other, then the situation may change greatly. For example, if the buyer is the landlord to the unwilling seller, then even fewer than two attempts may be called harassment. If the buyer knowingly uses his position to influence the sale, then even one attempt is problematic.

We should also note that this involves making repeated attempts under the same price and terms. If, with each attempt, the buyer offers terms or prices more advantageous to the seller, then it is called a “first attempt.”

A very important question is if the prohibition works in the reverse: Does a salesman who desires the money of a customer transgress this prohibition by pushing the customer to buy?

¹⁴ [*Hilchos Gezeilah 1:9*](#).

¹⁵ III: 43. Rav Betzalel Stern (1910 – 1988) was a Hungarian rabbi who settled in Melbourne, Australia after the holocaust. Along with his brother, Rabbi Moshe Stern (author of the *Beer Moshe*), he played a crucial role in rebuilding Judaism post-Holocaust.

This question has been discussed by many, many *poskim*. While some hold *lo sachmod* is a problem even in these situations, most are lenient.¹⁶ As well, this prohibition applies to gifts.

**Formulating
Covetous
Thoughts &
Plans**

In addition to actually pressing another party into a sale, the Torah also forbids entertaining plans and thoughts by which to deprive another of his property. Deuteronomy 5:18 states:

Do not desire [lo sisaveh] your neighbor's house.

The phrase *lo sisaveh* is commonly mistranslated as *you shall not covet*. A correct translation, however, *you shall not desire*. The sages explain that entertaining the desire for another's property is the first step toward near-inevitable transgression. This is also implied by Michah 2:2:

They desired fields and so robbed them.

Once a person begins to plan and scheme to gain the property of another, the *yetzer hora*, destructive desire, takes strong hold of the person's judgment. It is only a slight step from there to *Aveira* – sin. If the one who desires the object then presses or forces the owner to sell it to him, then the buyer has transgressed two prohibitions: 1) Against desiring and, 2) Against pressing another to part with his property.

Many commentaries cite I Kings 21 as a cautionary tale on such desire. There are many interesting questions raised by this prohibition that we will be discussed in the live class.

**Against False
Weights &
Measures**

The prohibition against using false weights and measures is brought in Leviticus 19:35:

Do not be dishonest in law, measures, weights, or volumes.

The Talmud's discussion of this prohibition includes many examples of deceptive practices such as:

- Soaking weights in salt water.

¹⁶ See [Minchas Asher](#) to Parshas Yisro. This is a complicated subject. In short, most *poskim* understand that one must desire a specific item in order to transgress this prohibition. Money is not considered enough of a specific item to incur the prohibition. The salesperson wants to bring in money, but he doesn't necessarily want a particular \$20 bill or one person's money over another's.

- Using the same measuring rope in the summer and the winter, in spite of the variations in length caused by changes in the weather.

Even though the variations are slight, they incur full transgression of the *mitzvah*.

The *Sifra* explains the term *lav* used in the source verse refers to the representations one makes as to his weights and measures.¹⁷ By extension, this prohibition includes false advertising and other misrepresentations ones may make as to his merchandise.

The laws are codified in the *Shulchan Aruch, Choshen Mishpat* 231.

**Against Owning
False Weights &
Measures**

Not only is it not permitted for one to misrepresent the weights, measures, and other details of his merchandise, but a person may not own or possess items used for transactional fraud or deceit. This is learned from Deuteronomy 25:13-14:

Do not have two stones in your bag, one large and one small. Do not have in your house two ephos [measuring units] one large and one small].

One is not even allowed to keep such an item if he intends to use it for an honest purpose (i.e. keeping a false weight to use as a paperweight). The details of this prohibition are discussed in the Talmud, Tractates Bava Metzia 61a and Bava Basra 89b

**Honesty
(Positive
Requirements) in
Weights and
Measures**

In addition to prohibiting misrepresenting the weights, measures and other properties of one's merchandise (and against owning the instruments of such fraud), we are required to maintain and ensure that our weight, measures, and other representations are correct. This is learned from Leviticus 19:36:

*Just balances, just weights, a just ephah [measure],
and a just hin [another measure], you shall have...*

This commandment establishes a positive mitzvah of quality control to ensure that customers are not charged improperly.

¹⁷ *Sifra* explains that the clause *Do not be dishonest in law...* cannot refer to passing legal judgment, for this was already commanded in Lev. 19:15.

Debts

Not Withholding Payment When One Has Means to Pay

Leviticus 19:3 states:

Do not withhold that which is due...

This verse prohibits withholding payment owed when the debtor has full ability to repay the creditor. This applies to any case in which one owes another a debt. Therefore, employers must pay employees and debtors must pay creditors.

This prohibition is not only transgressed by flat denial, but also by pushing off payment with excuses and delays.

Falsely Denying a Debt

Similarly, it is prohibited for one to falsely deny a debt, as Leviticus 19:11 states:

Do not deny it...

A person is also prohibited from falsely denying that another entrusted him with an item or money. A person may also not falsely deny he borrowed an item.

By denying a debt or that one has another's property in his possession, even though the other party may have entrusted items to him willingly, one commits a form of passive theft. True, the perpetrator never took the items. However, his brazen denial of having the items or money in his possession is considered a type of unlawful seizure.

Summary

1. Theft is the taking of another's property without the victims' immediate knowledge.
2. Robbery is taking an item with force and with the victims' immediate knowledge.
3. One may not overcharge by more than 16% of the fair-market value. Similarly, underpaying by more than 16% also creates problems. There are many items and situations to which this prohibition does not apply.
4. It is prohibited to pressure another into selling an item that he does not want to sell. This does not apparently apply to pressuring another into buying an item.

5. One may not make covetous plans or entertain such thoughts.
6. False weights and measures are prohibited. This includes false advertising or other business deceptive practices.
7. One may not even own such items.
8. One has a duty to maintain such weights and measures.
9. If one has the capacity to repay a debt, he must do so. It is prohibited to hold the funds in such a case.
10. One is forbidden from denying a debt or committing other forms of passive theft.